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Attn: EIS/EIR Comments
CALFED Bay-Delta Program
 1416 Ninth Street, Room 252-35
 Sacramento, CA 95814

 Re: Comments of San Joaquin County on
June 1999 Draft of CALFED EIR/EIS

Ladies and Gentlemen:

These written comments are presented on behalf of San Joaquin County and the San Joaquin County Flood Control and Water Conservation District, which District includes all of San Joaquin County and is governed by the San Joaquin County Board of Supervisors. The comments expand upon and are supplementary to the oral and written comments of Robert J. Cabral, Chairman of the San Joaquin County Board of Supervisors, and Supervisors Edward A. Simas and Jack A. Sieglock, presented at the CALFED public hearing held in Stockton on August 18, 1999.

The fact that our Assemblyman, three of our County Supervisors, many of the water agencies within the County, and a great many of the citizens of the County appeared and spoke at the Stockton hearing demonstrates the great concern of San Joaquin County with respect to the CALFED process. The plans and decisions of CALFED are vital to the economic and environmental well being of San Joaquin County and yet San Joaquin County has had, contrary to its desires, only a limited role in the CALFED process.

We believe the June 1999 Draft EIS/EIR is inadequate for the purposes intended and therefore does not comply with the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The EIS/EIR continues, in its present form, to fail to make available to the decision makers significant relevant information needed to make a decision with respect to the issues presented.

SAN JOAQUIN COUNTY

We have previously given you an overview of San Joaquin County and its significant water problems, but for the completeness of this statement, we include that information once again. San Joaquin County is located at the northern end of the San Joaquin Valley, and covers approximately 921,600 acres, most of which is devoted to agricultural purposes. The County is bordered on the east by the Sierra Nevada foothills, and the western portion includes much of the Sacramento-San Joaquin Delta. The San Joaquin River flows south to north through the County, and the Mokelumne, Calaveras, and Stanislaus Rivers flow east to west through the County into the Delta.

THE DELTA

On the west side of the County one finds the Delta region. Of the 738,000 acres within the legal definition of the Delta, the County of San Joaquin embraces within its boundaries more than 300,000 acres of Delta lands. The Delta includes very productive agricultural land and also miles of waterways which abound in fish and other wildlife and which are used extensively for recreational purposes.

On the east side of the County one finds a critically overdrafted groundwater basin. Although four rivers flow through the County, the County and its inhabitants have been forced to rely too heavily upon a limited groundwater supply to meet reasonable and beneficial water needs. The Eastern San Joaquin County Groundwater Basin (Groundwater Basin), which underlies more than half of the County, has been identified as subject to critical conditions of overdraft by the Department of Water Resources (DWR) and by State statute.

The eastern portion of San Joaquin County is an extremely productive agricultural area including large blocks of Class 1 soils and is devoted primarily to orchards and vineyards. The Lodi-Woodbridge appellation area is recognized as one of California's quality wine producing areas. In addition, San Joaquin County has a population in excess of 545,000. Unfortunately, eastern San Joaquin County overlies a critically overdrafted groundwater basin.

The effect of the critical conditions of overdraft has been declining groundwater levels and the intrusion into the Groundwater Basin of ancient

deposits of marine brine underlying the Delta. The fundamental problem of a critically overdrafted groundwater basin underlying the County, must be addressed and considered in any CALFED alternative. The June 1999 draft still fails to do that. The County and others within the County have made repeated efforts to acquire additional supplies of surface water for the area in order to restore and protect the Groundwater Basin. However, these efforts have been consistently frustrated throughout the years by actions of the State Water Resources Control Board (State Board), its predecessors, the United States Bureau of Reclamation (Bureau), and others. The County by State and U.S. policy direction and by regulatory action was directed to the American River and the Folsom South Canal which never came to be. This fundamental problem, the critically overdrafted groundwater basin underlying the County, must be addressed. In order to solve this problem, it is essential that the existing level of surface water supplies to the area continue and that additional surface water supplies are developed in order to reduce the dependency on groundwater. San Joaquin County and the water agencies within the Eastern portion of the County viewed New Melones as a partial fallback, but its dedication to different uses than contemplated when it was authorized and constructed has left the County in a very bad position. Any CALFED EIS/EIR which fails to consider the problem of the overdraft which in turn is directly linked to the use of New Melones to attempt, often unsuccessfully, to meet the present salinity standard at Vernalis, as well as other Delta flow requirements, is inadequate. We are disappointed there has still been a failure to directly address the issue.

EASTERN SAN JOAQUIN COUNTY

The Draft EIS/EIR fails to consider the needs of eastern San Joaquin County. A solution to the overdrafted Eastern San Joaquin County Groundwater Basin is a matter, not only of concern to this County, but to the entire State of California, in view of the agricultural productivity of the area and the significant population residing within the area. The CALFED program should consider a specific component to address the needs of eastern San Joaquin County while meeting Delta objectives.

The Department of Water Resources defined the Eastern San Joaquin County Groundwater Basin as one that is subject to critical conditions of overdraft. The EIS/EIR must fairly and adequately describe and analyze the overdraft condition as affected by the alternatives presented in the EIS/EIR. The

draft EIS/EIR fails to describe or consider the condition at all. A complete EIS/EIR must evaluate the significance of the overdraft condition to the area and the impacts on the lack of availability of groundwater supplies in San Joaquin County.

Recent studies indicate approximately 70,000 acre-feet of additional water is needed to halt the flow of subsurface saline water into the Eastern San Joaquin County Groundwater Basin. The total additional water needed in the area to address the critical overdraft conditions of the Groundwater Basin is approximately 250,000 acre-feet per year.

The Eastern San Joaquin County Groundwater Study, prepared by Brown & Caldwell in October 1985, indicates that the basin has an average annual overdraft of 70,000 acre-feet. Page 1-6 of the 1985 Study explains the basis for this determination:

Over the course of the verification process, the hydrological balance for the groundwater basin was prepared for the 1963-1982 period. The balance consists of annual inventory of inflows and outflows to the basin. The balance is based on the study area boundaries and thus excludes the portion of the model area outside San Joaquin County.

Based on this balance, there has been a total net inflow from the system of nearly 1.5 million acre-feet over the 20 year verification period, from the 1963 to 1982 period. This represents an average annual outflow (or overdraft) during the selected period of about 70,000 acre-feet. This historic average net outflow does not represent the magnitude of future basin overdraft because this balance does not account for all future basin depletions, such as increased M&I pumpage and increased basin exports to EBMUD and use by Calaveras County.

The 1996 American River Water Resources Investigation Planning Report and Draft Environmental Impact Report/Environmental Impact Statement, prepared by the U.S. Bureau of Reclamation, also identified a need for a minimum of 70,000 acre-feet per year as needed in the Groundwater Basin in order to halt the flow of subsurface saline water into the Eastern San Joaquin County Groundwater Basin. Halting the subsurface saline water inflow is critical to preserving the usability of the basin. A loss of the basin will obviously result in a much larger water requirement.

In order to restore the groundwater basin to a safe and economical operating level, the continued overdraft would have to be halted (requiring 70,000 acre-feet per year), as well as, additional water for restoration of the basin to a level at which it could be stabilized to meet the long-term needs of the residents of San Joaquin County. In the American River Water Resources Investigation Planning Report, in Technical Appendix, Volume 111, page 4 of the Technical Memorandum No. 9, it is reported that 129,500 acre-feet per year of supplemental water would be required to meet the year 2030 water demand and restore the groundwater basin to the 1990 levels of groundwater and to halt the overdraft. This need for 129,500 acre-feet per year of supplemental water is in addition to the 70,000 acre-feet of recharge water necessary to halt saline water movement into the basin.

In the analysis which led to the conclusion that 129,500 acre-feet of supplemental water per year is needed, it was assumed that the Bureau of Reclamation contract for Central Valley Project water for 49,000 acre-feet per year from the Stanislaus River would be available to the Central San Joaquin Water Conservation District (Central) through its contract with the U.S. Bureau of Reclamation. This delivery has never been effectuated at that level and the level of future delivery pursuant to the contract is uncertain; litigation is pending. Due to the reluctance of the Bureau to effectuate the deliveries to which Central is entitled, the amount of supplemental water needed to restore the Groundwater Basin, in fact, is even greater.

Thus, the total amount of water required in Eastern San Joaquin County is in excess of 250,000 acre-feet per year. This represents the total amount of supplemental water required to address the critical overdraft conditions of the Groundwater Basin. The failure to properly present the condition of overdraft in the Groundwater Basin in eastern San Joaquin County and the impacts thereof makes the EIS/EIR inadequate for its purpose.

REGULATORY FRAMEWORK

Section 8.2 of the present Draft of the EIR/EIS deals with the "Regulatory Framework" for decisions and has two glaring omissions. Section 8.22 mentions the objectives of the Delta Protection Act, but there is no mention of the overriding Section 12204 which specifically provides that no water shall be exported from the Delta, which is necessary to meet the salinity control, and

water, requirements of the Delta. We are further concerned that the Watershed Protection and Area of Origin statutes are not even mentioned as a part of the Regulatory Framework. We can only conclude they are to be ignored as they have been to date, which is unacceptable. Sadly, the promises made to the areas of origin at the time of construction of the Central Valley Project and the State Water Project even though those promises are set forth in statutes, have not been kept. While the Draft EIS/EIR mentions the existing Watershed and Delta Protection Acts and Area of Origin Laws, it fails to meaningfully consider the application of these Laws to the alternatives proposed.

WATERSHED PROTECTION ACT AND AREA OF ORIGIN LAW

When the legislature enacted the Central Valley Project, it established laws to protect the commitment made at that time to northern California water users; that is, that our water supply would not be depleted for the sake of exporting away from northern California. The law states, "a watershed or area wherein water originates, shall not be deprived directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein." California Water Code §11460. Unfortunately, the CALFED alternatives as drafted, do not meaningfully consider the application of these laws to the area and watersheds of origin, again another serious inadequacy.

The Watershed Protection Statute, beginning at California Water Code Section 11460, provides protection to the inhabitants and users of the County. The EIS/EIR fails to recognize this right to preferential services. Section 11460, Prior Right to Watershed Water, states in full:

In the construction and operation by the [Department of Water Resources] of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can be conveniently supplied with water therefrom, shall not be deprived by the department directly, or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

To come within the protection of Water Code Section 11460, the County must be an area wherein water originates or an area immediately adjacent to such area, which can be conveniently supplied with water from such area. Both the actual Delta area and the Eastern San Joaquin County Groundwater Basin satisfy that criteria. The County meets these criteria due to its proximity to both the Sacramento River Watershed and the San Joaquin River Watershed. The County is either part of each of these watersheds or immediately adjacent to each of these watersheds or both. The County is obviously a part of the Stanislaus River Watershed or an area which can be conveniently served from the Stanislaus. Physical facilities are in place for service from the Stanislaus.

Further evidence of the Legislature's intent to provide protection to the watersheds where water originates can be found in Water Code Section 232, which states in part:

The Legislature finds and declares that in providing for the full development and utilization of the water resources of this state it is necessary to obtain for consideration by the Legislature and the people, information as to the water which can be made available for exportation from the watersheds in which it originates without depriving those watersheds of water necessary for beneficial uses therein.

The EIS/EIR and the implementation of the alternatives must take into consideration the clear intent of the Legislature in enacting the Watershed Protection Statute and related provisions, and fulfill the water needs of the County before exporting water to outside users. Historically this has not occurred. California Water Code Section 11460 requires that water from exports by way of the State Water Project (SWP) and Central Valley Project (CVP) Delta pumps be used to meet the burdens of the San Joaquin River and Delta fishery and water quality requirements which are currently being met by fresh water releases from New Melones Reservoir. The EIS/EIR is insufficient as it does not consider alternatives consistent with these requirements of State law, a requirement which must be met if the EIS/EIR is to be adequate.

STORAGE

We are, however, encouraged by the inclusion of surface and groundwater storage among the alternatives and particularly the various projects which might

utilize groundwater storage specifically for eastern San Joaquin County. However, that alone does not recognize the applicable concepts of area of origin and watershed protection. The inclusion of groundwater storage projects, including those benefiting areas of origin, could provide an indirect recognition of watershed and area of origin rights if funds were made available to assist with those projects. We have examined the Financing Plan and, while we find a suggestion that financial assistance may be provided, it is not a clear statement, and we would ask at the very least that the matter be clarified.

DELTA PROTECTION STATUTE

The provisions of the California Water Code which provide special legislative protection to the Delta, beginning at Section 12201, provide specific protection to the users and future users of the County. Water Code 12204 states in full:

In determining the availability of water for export from the Sacramento-San Joaquin Delta, no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.

Section 12202 specifically provides the Board with the duty to provide an adequate water supply for Delta users and for salinity control. Section 12202 states in full:

Among the functions to be provided by the State Water Resources Development System in coordination with the activities of the United State and providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control, no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505

and Sections 11460 to 11463, inclusive, of this code.

Section 12203 states in full:

It is hereby declared to be the policy of the state that no person, corporation or public or private agency of the state or the United States should deliver water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled.

By the definition of the boundaries of the Delta found in Section 12220, in addition to the Delta proper, a portion of the Groundwater Basin area is within the statutorily defined Delta. Section 12203 and 12204 therefore require that those users within the Delta are entitled to the water of the Delta before any other diversions, including exports. The EIS/EIR fails to consider CALFED alternatives consistent with the language of the Delta Protection Statute. The exports from the Delta by the CVP are legally restricted to water which is "surplus" to the needs of beneficial uses therein.

In implementing the CALFED Program, alternatives must give full consideration to the language of these statutes and may not take any action contrary to these or other authorities that will harm existing users in the County and further harm the opportunity of the County to obtain supplemental surface water supplies to relieve the overdrafted Groundwater Basin. Setting forth alternatives which do not recognize applicable California law is not only inadequate but is a disservice to the decision makers who will use the EIS/EIR.

SAN JOAQUIN RIVER

While we are pleased with the various mentions of the San Joaquin River in the documents, we are concerned, however, that no overall strategy to deal with the San Joaquin River is put forth. We were very disappointed to read at page 42 of the Revised Phase II Report that CALFED will not pursue, or even consider, a San Joaquin Valley Drain because it is beyond the scope of the CALFED program. We are baffled as to why a drain would be beyond the scope of a program directed to "fixing" the problems of the Delta and which considers many alternatives, both structural and non-structural, to address California water problems. We continue to believe that a drain is an integral part of a solution

and we are mystified as to why CALFED neglects even consideration. I want to make it clear that San Joaquin County does not contemplate a drain to the Delta, to San Francisco Bay, nor to Monterey Bay but rather a drain terminating offshore in the ocean currents.

The San Joaquin River as it exists today has a major negative impact on the Delta and on the water supply for much of the state. We believe the CALFED process should, at a minimum, adopt and pursue the following principles:

1. There must be a comprehensive plan to resolve San Joaquin River water quality problems.
2. The San Joaquin River plan must be based on the premise that all adverse impacts caused by the State Water Project and the Central Valley Project shall be fully mitigated by those projects.
3. The plan must recognize and adhere to California's area of origin and watershed protection laws.
4. The Regional Water Quality Control Board, Central Valley Region, Basin Plan for Salinity and Boron, including areas upstream of the Merced, must go forward and be completed by March of 2000. Timely completion is dependent upon sufficient funding. To the extent necessary, CALFED should encourage and, if necessary, support the process.
5. Funding and completion of a Total Maximum Daily Load process for dissolved oxygen in the San Joaquin River is also essential. In addition, the dissolved oxygen problem must be addressed both by increased flows and corrections in the direction of flow.
6. By various means, with the help of CALFED, the USBR must secure water to meet the 1995 Water Quality Plan Objectives at Vernalis from sources other than New Melones to, in turn, permit New Melones to meet the needs within its service area and to satisfy watershed and area of origin needs, including the needs of the New Melones contractors.
7. As discussed above, the Drain and/or other means of disposing of salinity outside of the San Joaquin River must be explored and

implemented.

8. The Water Quality Objectives for agricultural beneficial uses at Vernalis should be met.

9. The operation of New Melones must comply with the 1987 Fish and Game Agreement without negatively affecting the Vernalis Salinity Objective and the entitlements of the New Melones contractors.

OPPOSITION TO ISOLATED FACILITY

The Preferred Alternative selects a Delta alternative rather than an isolated canal. We support this conclusion, but we note with concern that the various documents make frequent reference to the possible use of an isolated facility in the future. It is therefore appropriate to reiterate the strong opposition of San Joaquin County to any form of an isolated facility. For the reasons which were stated by many at the August 18, 1999 hearing, the alternative of an isolated facility should be eliminated as an alternative.

CONVERSION OF DELTA AGRICULTURAL LAND

We have previously expressed our concern with the conversion of Delta agricultural land to wetlands or other non-agricultural use. The present documents do not address our previous concern. A very large acreage is involved. The economic impacts to individuals and to the San Joaquin County economy as a whole must be addressed and those impacts are not addressed in the present draft, resulting in a significant inadequacy. While the County is diversified, agriculture is now, and will remain, our basic industry. Accordingly, the San Joaquin County Board of Supervisors has a strong policy of protecting agricultural land. This policy is apparently not shared by the authors of the present draft EIS/EIR. In any event the financial and economic consequences of the proposed conversion are not addressed making the EIS/EIR inadequate.

SOUTH DELTA

There has long been underway the negotiation of a settlement to pending litigation brought by the South Delta Water Agency involving the operations of

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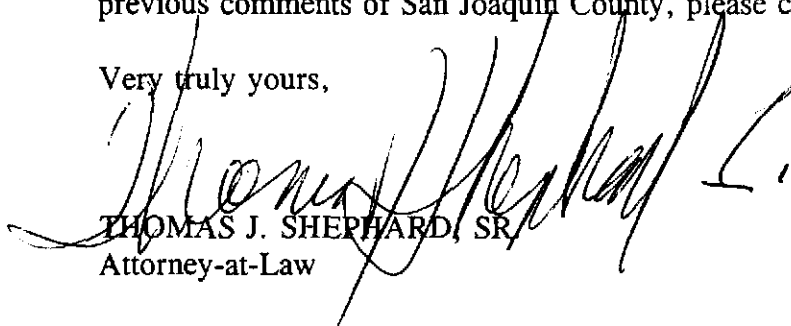
the Central Valley Project and the State Water Project. A settlement had been reached. CALFED now seems to unsettle the plan, in turn, with a plan that negatively impacts water supplies and water levels in the South Delta. Among other things, the Grant Line Canal Barrier is, at best, delayed for seven years. The mere construction of the barriers is not enough; they must be operated when needed. Operation of the barriers should be governed by a committee of interested parties including representatives of local interests, both agricultural and urban. None of this is considered in the present Draft EIS/EIR.

RECIRCULATION

It appears using the Delta Mendota Canal for recirculating water to improve San Joaquin River water quality reaching the Delta while decreasing the burden on New Melones to the benefit of both eastern San Joaquin County and the South Delta is possible. Unfortunately, the concept is, at best, merely kept open in the current documents. It should be addressed now and its benefits and impacts considered in the EIS/EIR.

If there are any questions with respect to these comments or any of the previous comments of San Joaquin County, please contact the undersigned.

Very truly yours,



THOMAS J. SHEPHARD, SR.
Attorney-at-Law

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